



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Kelton Contracting, Inc.

File: B-262255

Date: December 12, 1995

John Kelton for the protester.

Emily C. Hewitt, Esq., and Donald R. Jayne, Esq., General Services Administration, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against an agency's acceptance of a late bid is denied where the record establishes that the hand-carried bid was received by the agency prior to the time set for bid opening, the agency's mishandling of the bid after its receipt was the paramount cause for the bid's receipt by the cognizant contracting specialist after the time set for bid opening, and the integrity of the procurement system was not compromised by the agency's consideration of the bid.

DECISION

Kelton Contracting, Inc. protests the award of a contract to INCA Contracting Company under invitation for bids (IFB) No. GS-09P-95-KTC-0047, issued by the General Services Administration (GSA) for the removal and replacement of pavements, roadways, driveways, and parking lots at the U.S. Geological Services Complex, Flagstaff, Arizona. The protester argues that INCA's bid was delivered late and therefore should have been rejected by the agency.

We deny the protest.

The cover to the IFB stated that bid opening would be held at 1 p.m. on July 21, 1995, and immediately thereunder listed the following address:

General Services Administration
Pacific Service Center
Attn: Deborah A. Ford (9PMC)
525 Market Street 30th Fl.
San Francisco, CA 94105-2799

The standard form (SF) 1442 included in the IFB provided that bidders were to address their bids to

General Services Administration
Business Service Center
525 Market Street
San Francisco, CA 94105-2799

The solicitation included Federal Acquisition Regulation (FAR) § 52.214-7, "Late Submissions, Modifications, and Withdrawals of Bids," which provides that a bid received at the office designated for bid opening after the specified bid opening time and date but prior to award will not be considered unless: (1) the bid was sent by registered or certified mail no later than 5 calendar days prior to the scheduled bid opening; (2) the bid--only if sent by mail, telegraph or facsimile--was late solely due to government mishandling after timely receipt at the government installation; or (3) the bid was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee no later than 2 working days prior to the scheduled bid opening date. This provision also states that "[t]he only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation." FAR § 52.214-7(e).

Four bids were opened at the 1 p.m. bid opening, with Kelton submitting the apparent low bid of \$484,600. INCA's bid of \$452,087 was not opened at that time because it was not delivered to Ms. Ford, the contracting specialist responsible for conducting the bid opening, until 2:30 p.m.

INCA sent its bid by Federal Express to the following address:

Deborah A. Ford (9PMC)
General Services Administration 30th Floor
525 Market Street
San Francisco, CA 94105-2799

INCA's bid was received by the agency at 10:26 a.m. on the date of bid opening. According to the agency, because Ms. Sandy Dale, the GSA employee who normally receives packages delivered by Federal Express, was away from her desk, Ms. Sandy Sitton of GSA signed for INCA's bid, and observed the Federal Express delivery person place the package on Ms. Dale's desk. Ms. Dale, whose normal practice is to immediately deliver Federal Express packages to the addressee, returned to her desk shortly after the delivery was made. However, no one informed her upon her return to her desk that a delivery had been made, and the package containing INCA's bid was no longer on Ms. Dale's desk. According to

the agency, the package had erroneously been placed in the agency's Construction Services Branch mail slot. The package was discovered in the mail slot--unopened--by another GSA employee at approximately 2:30 p.m. and was delivered at that time to Ms. Ford.

The agency determined that INCA's bid could be considered for award because the IFB was ambiguous as to where bids were to be sent, and government mishandling upon receipt of the bid was the paramount cause for its late receipt by the contracting specialist responsible for the conduct of the bid opening. Award was made to INCA on August 3.

Kelton protests that INCA's bid cannot be considered by the agency because the three late bid exceptions set forth at FAR § 52.214-7 do not apply to hand-carried bids. Kelton also asserts that the information cited by the agency as proof that INCA's bid was timely received at the agency is not acceptable under FAR § 52.214-7(e).

As a general rule, bidders are responsible for delivering their bids to the proper place at the proper time. Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506. Where, as here, a bid is delivered by a commercial carrier, the bid is regarded as hand-carried. Id. A late bid, hand-carried by a commercial carrier, can be considered for award if government mishandling after the timely receipt at the agency is the sole or paramount cause for the bid's late receipt at the office designated for bid opening, and if consideration of the late bid would not compromise the integrity of the procurement process. John J. Kirlin, Inc., B-250244, Dec. 15, 1992, 92-2 CPD ¶ 419; Weather Data Servs., Inc., B-238970, June 22, 1990, 90-1 CPD ¶ 582. In this regard, we have held that a strict and literal application of the late bid rules set forth at FAR § 52.214-7 should not be used to reject a bid where to do so would contravene the intent and spirit of full competition. Select, Inc., B-245820.2, Jan. 3, 1992, 92-1 CPD ¶ 22.

Contrary to the protester's assertions, FAR § 52.214-7(e), which the protester argues renders unacceptable the information provided by the agency as proof that INCA's bid was timely received, is irrelevant here because it applies only to bids sent by mail, and not to hand-carried bids such as INCA's. Santa Cruz Constr., Inc., B-226773, July 2, 1987, 87-2 CPD ¶ 7. Neither procurement regulations nor decisions of our Office require that timely receipt of hand-carried bids be proved only by a time/date stamp or other documentary evidence maintained by the government installation. Id. Where, as here, the issue is whether a hand-carried bid was timely received by the agency, all relevant evidence, including statements made by government personnel, may be considered. Power Connector, Inc., B-256362, June 15, 1994, 94-1 CPD ¶ 369.

The evidence cited by the agency reasonably supports a conclusion that timely delivery of the bid to the agency was accomplished. For example, the Federal Express tracking sheet submitted by the agency shows that Ms. Sitton signed for the package at 10:26 a.m. on July 21. The agency has also furnished a letter from Federal Express which, in addition to again providing that Ms. Sitton signed for the package containing INCA's bid at 10:26 a.m. on July 21, includes a photocopy of Ms. Sitton's signature attesting to delivery. Further, the agency has furnished the affidavit of Ms. Sitton, wherein she states that she signed for the Federal Express package containing INCA's bid at 10:26 a.m. on July 21, and observed the Federal Express delivery person place the package at that time on Ms. Dale's desk. Ms. Dale has also provided an affidavit in which she states that she was away from her desk at 10:26 a.m. on July 21, and that she was informed later by Ms. Sitton that Ms. Sitton had signed for INCA's package at 10:26 a.m. and that Ms. Sitton had observed the Federal Express delivery person place INCA's bid package on Ms. Dale's desk at that time. Because the evidence in this case supports without exception the agency's position that INCA's bid was received by the agency at 10:26 a.m. on July 21, and its accuracy and veracity is unchallenged by the protester, we can only conclude that INCA's bid was timely received by the agency.

The record also evidences that INCA acted in a manner reasonably calculated to ensure the delivery of its bid before bid opening, and that the agency's actions were the paramount cause for the bid's late receipt. Specifically, although INCA's bid was not sent to the address set forth on the IFB's SF 1442, it was addressed to the contracting specialist identified in the solicitation as the agency's point of contact, and was received by the agency at its offices on the 30th floor of 525 Market Street--where the contracting specialist has her office--more than 2-1/2 hours prior to the time set for bid opening. As reported by the agency, had the agency's normal procedures for receipt and distribution of Federal Express packages been followed, the package would have been received by the contracting specialist well before the time set for bid opening. However, the package was misdirected to the Construction Services Branch mail slot and was not discovered for 4 hours. This misdelivery negated the agency's standard procedures for the receipt and immediate delivery of Federal Express packages to the addressees, and effectively precluded the timely delivery of INCA's bid to Ms. Ford for bid opening. In sum, even though INCA's bid was not precisely addressed in accordance with the instructions set forth on the IFB's SF 1442, the record demonstrates that the agency's mishandling of INCA's bid was the paramount cause for the bid's late receipt at the office designated for bid opening. Power Connector, Inc., supra.

In addition, the record establishes a reasonable chain of custody for INCA's bid after its receipt by the agency at 10:26 a.m., and shows that the bid was in the sole custody of the agency at the time of bid opening and thus could not have been changed by INCA. Therefore, consideration of INCA's bid did not introduce any unfair advantage into the competitive process and thereby compromise its integrity. Power Connector, Inc., supra.

Based on the foregoing, the agency's decision to consider INCA's bid was proper.

The protest is denied.

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of the United States